HD

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,529	04/20/2001	Andrew Hausman	3524/33	2141

29858   7590   08/23/2007
THELEN REID BROWN RAYSMAN & STEINER LLP
PO BOX 1510
875 Third Avenue, 8th Floor
NEW YORK, NY 10150-1510

EXAMINER
OYEBISI, OJO O

ART UNIT	PAPER NUMBER
3692	

MAIL DATE	DELIVERY MODE
08/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *13 August 2007*.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-50* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-50* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

        1. ☐ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____.

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

08/13/07 has been entered. In the RCE filed on 08/13/07, the following have occurred:

claims 1, 16, 18, 33, 34, 39, 41 and 46 have been amended

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the
invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Kalmus et al. (Kalmus hereinafter, US PAT: 4,674,044).

Re claim 1. Kalmus discloses a method for electronic trading of interest with a reserve

over at least one network including computers, comprising: receiving from a given user

an order comprising terms for a total desired trade of interest (i.e., orders has to include

appropriate data fields, such as identification of the office and customer, stock

identification, price particulars and so forth, and then qualifies the order, see col.5, lines

1-10), said terms comprising an identification of said interest (i.e.,

stock/orders/shares/securities, see col.5, lines 1-10), an initial price (i.e., current bid and

asked prices, see col.5, lines 1-10), an initial quantity (i.e., the amount of stock available

for customer purchase or sale, see abstract) and a reserve quantity (i.e., orders not

executable, i.e., orders not qualified, are either stored in memory for later execution if

they become qualified, see col.5, lines 15-20); **said total desired trade being for a**

total desired quantity of the interest equal to a sum of said initial quantity and

said reserve quantity; associating with said desired trade a reserve price change (i.e.,

a favorable change in the market price for a security, see col.5, lines 19-22); disclosing

based on the order received from the given user terms of a first proposed trade of said

interest to others via the at least one network (i.e., first determines whether or not each

received order can be executed i.e., qualifies the order, see col.5, lines 5-10) said

terms for a first proposed trade comprising an identification of said interest (i.e.,

stock/orders/shares/securities, see col.5, lines 1-10), said initial price (current bid and

asked prices, see col.5 lines 1-10) and said initial quantity(i.e., the amount of stock

available for customer purchase or sale, see abstract); and upon acceptance of said

first proposed trade (i.e., order execution, see col.5, lines 22-25), disclosing terms of a

second proposed trade of said interest to others via the at least one network (i.e.,

determines whether or not each received order can be executed i.e., qualifies the order,

see col.5, lines 5-10), said terms for a second proposed trade comprising an

identification of said interest (i.e., stock/orders/shares/securities, see col.5, lines 1-10),

wherein disclosure to others of the reserve quantity of the order is withheld prior to the

acceptance of said first proposed trade. Kalmus does not explicitly disclose the

limitations " a second price, and a second quantity, said second price being equal to

said initial price changed by said reserve price change, and said second quantity

comprising at least a portion of said reserve quantity." However, Kalmus does suggest

that when the insider market price changes, the processor signals the trader who in turn

readjusts his quantity or other market-characterizing criteria, and following each price

change, all non-executable orders stored in memory are reviewed to determine whether

they have become executable (see col.5, line31-45). Thus, when the price changes and

the quantity is readjusted, it would have been obvious to one of ordinary skill that there

would be a new price (i.e., second price, third price, fourth price etc) and a new quantity

(i.e., second quantity, third quantity, fourth quantity etc), and said second quantity would

comprise at least a portion of said reserve quantity (i.e., every order (first, second, third

etc) which would have been taken from non executable orders (reserve quantity) until all

orders become executable).

Re claims 2-7. Kalmus discloses the method, wherein said interest comprises a

commodities contracts, energy forward contracts, equity securities, fixed income

securities, currency, a first currency and said initial price and said second price are

expressed in a second currency (i.e., stock/orders/shares/securities see col.5, lines 1-

10, also see abstract).

Re claim 8. Kalmus further discloses the method, wherein all terms of said second

proposed trade are automatically disclosed (i.e., operative best bid and best asked

prices for each stock are communicated over link 22 from NASDAQ........, and orders

for trades in the relevant securities are funneled to the processor in real time, see col.4, lines 52-60).

Re claim 9. Kalmus further discloses the method as stated supra, wherein all terms of said second proposed trade are disclosed only after some intervention by an appropriate system user (i.e., the processor signals the trader to readjust his quantity or other market-characterizing criteria, see col.5, lines 35-40).

Re claims 10 and 11. Kalmus further discloses the method as stated supra, wherein said proposed trades are proposed sales, and said reserve price change increases said initial price, and said proposed trades are proposed purchases, and said reserve price change decreases said initial price (i.e., Thus, for example, the customer may seek to sell stock above the current bid price or to purchase the security below the current asked price. A customer may seek to trade a number of shares which exceeds the amount which the particular market maker is willing to accommodate, either in gross or for any one order. Orders not executable, i.e., orders not qualified, are either stored in memory in the processor 10 for later execution if they become qualified (such as by a favorable change in the market price for a security which can then accommodate the customer's price limits, col.5 lines 5-20. That is to say, the bid prices and the asked prices are readjusted when the orders become qualified depending on if the orders are sale orders or purchase orders, later execution of proposed sales would sell at higher prices than the initial price, and later execution of proposed purchases would purchase at lower prices than the initial prices).

Re claim 12. Kalmus further discloses the method, wherein said second quantity is equal to a preselected quantity, or if said reserve quantity is less than the preselected quantity, all of said reserve quantity (i.e., when the insider market price changes, the processor signals the trader who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable (see col.5, line31-45), that is to say, when the price changes and the quantity is readjusted, it is obvious that there will be a new price (i.e., second price) and a new quantity (i.e., second quantity), and said second quantity would comprise at least a portion of said reserve quantity (i.e., every order (first, second, third etc) would be taken from non executable orders (reserve quantity) until all orders become executable – note if preselected quantity > reserve quantity, then all orders have been executed, reserve=0).

Re claim 13. Kalmus does not explicitly disclose the method, further comprising: upon acceptance of said second proposed trade, disclosing terms of a third proposed trade of said interest to others via the at least one network, said terms for a third proposed trade comprising an identification of said interest, a third price, and a third quantity, said third price equal to said second price changed by said reserve price change, and said third quantity being not greater than said reserve quantity less said second quantity. However, Kalmus does implicitly teach this limitations "when the insider market price changes, the processor signals the trader who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable

orders stored in memory are reviewed to determine whether they have become

executable" (see col.5, line31-45). Thus, when the price changes and the quantity is

readjusted, it is obvious that there will be a new price (i.e., second price, third price,

fourth price etc) and a new quantity (i.e., second quantity, third quantity, fourth quantity

etc), and said third quantity would comprise at least a portion of said reserve quantity

(i.e., every order (first, second, third etc) would be taken from non executable orders

(reserve quantity) until all orders become executable - note if preselected quantity >

reserve quantity, then all orders have been executed, reserve=0, thus reserve quantity

has to be >= preselected quantity).

Re claim 14. Kalmus further implicitly disclose the method, wherein said third remaining

quantity is equal to a preselected quantity, or if the quantity of reserve remaining less

said first and second quantities, all remaining reserve (i.e., "when the insider market

price changes, the processor signals the trader who in turn readjusts his quantity or

other market-characterizing criteria, and following each price change, all non-executable

orders stored in memory are reviewed to determine whether they have become

executable" (see col.5, line31-45). Thus, when the price changes and the quantity is

readjusted, it is obvious that there will be a new price (i.e., second price, third price,

fourth price etc) and a new quantity (i.e., second quantity, third quantity, fourth quantity

etc), and said third quantity would comprise at least a portion of said reserve quantity

(i.e., every order (first, second, third etc) would be taken from non executable orders

(reserve quantity) until all orders become executable - note if preselected quantity >

reserve quantity, then all orders have been executed, reserve=0, thus reserve quantity

has to be >= preselected quantity).

Re claim 15. Kalmus further discloses the method, further comprising completing at

least one of said trades (i.e., order execution, see col.5 lines 5-45).

Re claim 16. Claim 16 recites similar limitations to claim 1, and thus rejected using the

same art and rationale in the rejection of claim 1.

Re claim 17. Kalmus further discloses the method, wherein said condition is

acceptance of a portion of an order for which the quantity and price are disclosed (i.e.,

when the insider market price changes, the processor signals the trader who in turn

readjusts his quantity or other market-characterizing criteria, and following each price

change, all non-executable orders stored in memory are reviewed to determine

whether they have become executable (see col.5, line31-45))

Re claim 18. Claim 18 recites similar limitations to claim 1 and thus rejected using the

same art and rationale in the rejection of claim 1.

Re claims 19-22. Kalmus discloses the product, wherein said interest comprises a

commodities contracts, energy forward contracts, in equity securities,

fixed income securities (i.e., stock/orders/shares/securities see col.5, lines 1-10, also

see abstract).

Re claim 23. Claim 23 recites similar limitations to claim 8 and thus rejected using the

same art and rationale in the rejection of claim 8.

Re claim 24. Claim 24 recites similar limitations to claim 9 and thus rejected using the

same art and rationale in the rejection of claim 9.

Re claims 25 and 26. Kalmus further discloses the method as stated supra, wherein said proposed trades are proposed sales, and said reserve price change increases said initial price, and said proposed trades are proposed purchases, and said reserve price change decreases said initial price (i.e., Thus, for example, the customer may seek to sell stock above the current bid price or to purchase the security below the current asked price. A customer may seek to trade a number of shares which exceeds the amount which the particular market maker is willing to accommodate, either in gross or for any one order. Orders not executable, i.e., orders not qualified, are either stored in memory in the processor 10 for later execution if they become qualified (such as by a favorable change in the market price for a security which can then accommodate the customer's price limits, col.5 lines 5-20.That is to say, the bid prices and the asked prices are readjusted when the orders become qualified depending on if the orders are sale orders or purchase orders, later execution of proposed sales would sell at higher prices than the initial price, and later execution of proposed purchases would purchase at lower prices than the initial prices).

Re claim 27. Claim 27 recites similar limitations to claim 12 and thus rejected using the same art and rationale in the rejection of claim 12.

Re claim 28. Claim 28 recites similar limitations to claim 13 and thus rejected using the same art and rationale in the rejection of claim 13.

Re claim 29. Claim 29 recites similar limitations to claim 14 and thus rejected using the same art and rationale in the rejection of claim 14.

Re claim 30. Claim 30 recites similar limitations to claim 15 and thus rejected using the same art and rationale in the rejection of claim 15.

Re claims 31 and 32. Kalmus further discloses the product, wherein said interest comprise currency, and said interest comprise a first currency and said initial price and said second price are expressed in a second currency ((i.e., stock/orders/shares/securities see col.5, lines 1-10, also see abstract).

Re claims 33 and 34. Claims 33 and 34 recite similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 35. Claim 35 recites similar limitations to claim 8 and thus rejected using the same art and rationale in the rejection of claim 8.

Re claim 36. Claim 36 recites similar limitations to claim 9 and thus rejected using the same art and rationale in the rejection of claim 9.

Re claim 37. Claim 37 recites similar limitations to claim 13 and thus rejected using the same art and rationale in the rejection of claim 13.

Re claim 38. Claim 38 recites similar limitations to claim 14 and thus rejected using the same art and rationale in the rejection of claim 14.

Re claim 39. Claim 39 recites similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 40. Claim 40 recites similar limitations to claim 17 and thus rejected using the same art and rationale in the rejection of claim 17.

Re claim 41. Claim 41 recites similar limitations to claim 1 and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 42. Kalmus further discloses the method, comprising also automatically disclosing said quantity from reserve and said price therefor (i.e., operative best bid and best asked prices for each stock are communicated over link 22 from NASDAQ......., and orders for trades in the relevant securities are funneled to the processor in real time, see col.4, lines 52-60).

Re claim 43. Kalmus further discloses the method, comprising disclosing said quantity from reserve and said price therefor in response to a prompt (i.e., **the processor signals the trader** who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable (see col.5, line31-45).

Re claims 44 and 45. Kalmus further discloses the method, wherein said reserve price change is associated with said order in response to a prompt (i.e., when the insider market price changes, **the processor signals** the trader who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable (see col.5, line31-45)).

Re claim 46. Claim 46 recites similar limitations to claim 1, and thus rejected using the same art and rationale in the rejection of claim 1.

Re claim 47. Claim 47 recites similar limitations to claim 42, and thus rejected using the same art and rationale in the rejection of claim 42.

Re claim 48. Claim 48 recites similar limitations to claim 43, and thus rejected using the same art and rationale in the rejection of claim 43.

Re claims 49 and 50. Kalmus further discloses the method, wherein said reserve price change is associated with said order in response to a prompt (i.e., when the insider market price changes, **the processor signals** the trader who in turn readjusts his quantity or other market-characterizing criteria, and following each price change, all non-executable orders stored in memory are reviewed to determine whether they have become executable (see col.5, line31-45)).

Response to Arguments

3.   Applicant's arguments filed on 08/13/07 have been fully considered but they are not persuasive. The applicant argues in substance that, the primary reference of record, Kalmus fails to disclose a reserve quantity nor reserve price as claimed in claim 1. First, applicant's disclosure discusses reserve in the following context: "A trader of interest such as stocks, bonds, commodities or commodities contracts may want to buy or sell such interest without immediately revealing in the relevant market the full extent of his or her intentions. For example, the disclosure to the market of the entire size of a purchase or sale order or quotation could affect the market by skewing the price. In such instances, traders may want to disclose only a portion of the full size of their intended trade to the market, and to withhold disclosing to the market the remaining portion of the intended trade (such withheld portion being known as a "reserve") until such time as the disclosed portion of the order or quotation has been executed. (Page 1, lines 17-25). The primary reference of record, **Kalmus,** discusses Reserve in the

following context: "Orders not executable, i.e., orders not qualified, are either stored in

memory in the processor 10 for later execution if they become qualified (such as by a

favorable change in the market price for a security which can then accommodate the

customer's price limits) or are forwarded to other market makers for potential execution.

. ." (Col. 5, lines 15-22). Kalmus further discloses that "here are various reasons why

an order will not be executed by the market maker. Thus, for example, the customer

may seek to sell stock above the current bid price or to purchase the security below the

current asked price. A customer may seek to trade a number of shares which exceeds

the amount which the particular market maker is willing to accommodate, either in gross

or for any one order. Such Orders are not executed, and are stored in memory and later

executed when there is a favorable change in the market price for a security which can

then accommodate the customer's price limits." Thus, the "Orders not executable" or the

"orders not qualified" as mentioned by Kalmus hereinabove is akin to the reserve

quantity as claimed by the applicant since these non-executable orders are kept in the

reserve until there is a favorable change in the market price for a security which can

then accommodate the customer's price limits. The examiner asserts that Kalmus

suggests that when the insider market price changes, the processor signals the trader

who in turn readjusts his quantity or other market-characterizing criteria, and following

each price change, all non-executable orders stored in memory are reviewed to

determine whether they have become executable (see col.5, line31-45). Thus, when the

price changes and the quantity is readjusted, it would have been obvious to one of

ordinary skill that there would be a new price (i.e., second price, third price, fourth price
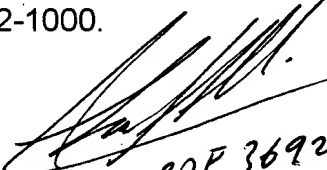
etc) and a new quantity (i.e., second quantity, third quantity, fourth quantity etc), and

said second quantity would comprise at least a portion of said reserve quantity (i.e.,

every order (first, second, third etc) which would have been taken from non executable

orders (reserve quantity) until all orders become executable).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to OJO O. OYEBISI whose telephone number is (571)

272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, kAMBIZ ABDI can be reached on (571)272-6702. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SPE 3692